Rather, Petitioner may choose from any one of 24 potential sites. Moreover, there is no evidence that the number of existing businesses within the city have declined since the adoption of the city's adult zoning ordinance, so that the zoning ordinance would have had a "chilling effect" on adult businesses. Justice O'Scannlain opined in *Young*, that it is difficult "to see how an individual can claim he has been denied a reasonable opportunity to open an adult business as long as there exists a site within the municipality available for his business." *Young*, at 825 (O'Scannlain, J., concurring in part and dissenting in part). Petitioner has been given a choice of 24 existing sites within the City of Pomona. As such, the Court of Appeal's decision comports with the law established in *Young* and *Renton* because the city provided Petitioner with a reasonable opportunity to open and operate his adult business.

B.

An Adult Zoning Ordinance That Restricts Adult Businesses to Two Different Industrially Zoned Areas is Consistent With *Young* and *Renton*

Petitioner's argument that Pomona's ordinance does not provide reasonable alternative channels of communication because adult businesses are restricted to light and general industrial zones is not supported by law. The zone in which adult businesses are restricted to is not relevant so long as the business owner is not effectively denied a reasonable opportunity to open and operate the business within the city, *Renton*, 475 U.S. at 54, because there is no constitutional right to locate one's business within a certain commercial zone. *3570 East Foothill Blvd., Inc., v. City of Pasadena*, 912 F.Supp. 1257, 1262 (C.D. Cal. 1995).

As long as reasonable relocation sites are provided somewhere in the municipality, denying an adult business the opportunity to locate in its preferred commercial zone is "not a harm that the Constitution will recognize nor remedy." *Id.* at 1262.

This Court has expressly recognized that cities "must be allowed a reasonable opportunity to experiment with solutions to [the] admittedly serious problems" associated with adult businesses. *Young*, 427 U.S. at 71. Furthermore, this Court has repeatedly upheld the method chosen by cities to regulate adult businesses, as for example, "dispersing them . . . or by effectively concentrating them." *Renton*, 475 U.S. at 52. So long as a city allows for some reasonable relocation sites, the method chosen by the city to further its substantial interests cannot be limited to one method. *Id.* In other words, a city is not prohibited by the First Amendment from enacting a zoning scheme, which effectively concentrates adult businesses within its two industrial zones. *See id.*; *Town of Islip v. Caviglia*, 540 N.E.2d 215, 218-20, 225-26 (N.Y. 1989) (upholding city's zoning scheme that concentrated adult businesses to an industrial district and imposed a one-half mile distance restriction between such businesses).

Petitioner's assertion that *Topanga Press, Inc. v. City of Los Angeles*, footnote 5 "left open" for further clarification the issue of the First Amendment reasonableness of a zoning ordinance that restricts adult businesses to industrial zones is wrong and misses the underlying reasoning applied by the *Topanga* court. 989 F.2d 1524, 1531 (9th Cir. 1993). Had the *Topanga* Court decided to "leave open the question" as to whether a reasonable opportunity to relocate exists when adult businesses are only allowed in industrial zones, it would not have gone through the

trouble of reviewing the case law for "clues as to what sort of land and/or structures reasonably ***may*** be said to comprise the relevant real estate market." *Id.* at 1530 (emphasis added).

After examining the findings of those cases, the *Topanga* court determined that "[t]he courts' findings in these cases lead us to hold that a particular relocation site ***may*** be considered part of the relevant real estate market when the following conditions are met." *Id.* at 1530-31 (emphasis added). The court went on to list the widely cited five factors for determining the physical and legal availability. They include: (1) whether there is a "genuine possibility" that the site will actually become available; (2) with respect to "***relocation sites which are within manufacturing or industrial zones***," if the site is reasonably accessible to the general public; (3) with respect to "areas in manufacturing zones," if the site has proper infrastructure, including sidewalks, road access and lighting; (4) if the site is fit for some "generic commercial enterprise," although not every enterprise; and (5) if the site is commercially zoned, it is *obviously* part of the actual market. *Id.* at 1531-32 (emphasis added). Clearly, with respect to condition number 2 and 3, the *Topanga* court fully believed that manufacturing or industrial zones could, in of themselves, constitute part of the relevant real estate market.

In this instant case, there is no dispute that Pomona tendered sufficient relocation sites. Pomona proffered 24 possible relocation sites within its light and general industrial zones, all of which are reasonably accessible to the general public. As a result, setting all other factors aside, the fact that the city concentrates adult businesses within its two industrial zones is "not a harm that

the Constitution will recognize nor remedy," *3570 East Foothill Blvd.*, 912 F.Supp. at 1262, because the City provided petitioner with a reasonable opportunity to relocate and operate within the city as required by *Young* and *Renton*.

CONCLUSION

For the reasons set forth above, it is clear that Petitioner has failed to demonstrate a compelling reason for why this court should grant Petitioner's Writ. Thus, Respondents request that the Petition for a Writ of Certiorari filed by Petitioner be denied.

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